

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

JAMES H. SHORTZ,

Plaintiff,

V.

CITY OF TUSKEGEE, *et al.*,

Defendants.

CASE NO. 3:08-CV-456-WKW

## ORDER

There being no objections filed to the Recommendation of the Magistrate Judge (Doc. # 32), and upon an independent review of the file, it is ORDERED that the Report and Recommendation is adopted and that defendants' motion to dismiss is GRANTED to the extent that:

- (1) all of plaintiff's claims against the Tuskegee Police Department are DISMISSED with prejudice;
- (2) Count Two of the complaint, alleging race discrimination in violation of 42 U.S.C. § 1981, is DISMISSED without prejudice; and
- (3) plaintiff's promissory fraud claim (Count Three) is DISMISSED with prejudice as to the City of Tuskegee and the Tuskegee Police Department.

This action is referred back to the Magistrate Judge for further proceedings on plaintiff's remaining claims.<sup>1</sup>

Done this 7th day of January, 2009.

/s/ W. Keith Watkins  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> Defendants do not expressly move for dismissal of the FLSA claim (Count One), and they argue generally for dismissal of the breach of employment contract claim (Count Four). See Doc. # 10, pp. 5-8. To the extent that the City's and police department's *respondeat superior* argument is intended to extend to these two claims, the motion is denied.